IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11969 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SWADESHKUMAR SHIVKUMAR JAIN -THROUGH- HIS FATHER

Versus

COLLECTOR & DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 11969 of 2004

MR NM KAPADIA for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1,3-4

RULE SERVED for Respondent No. 1

MR MA SHAIKH for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 09/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr.. NM Kapadia for the detenu, ld. AGP Ms. HB Punani for the State and ld. Addl. CGSC Mr. MA Shaikh for respondent No.2 Union of India. Affidavit-in-reply tendered today on behalf of the State Government by ld. AGP Ms. Punani is taken on record.

2. By this petition under Article 226 read with Articles 21 & 22 of the Constitution of India, the petitioner who is the father of detenu Swadeshkumar Shivkumar Jain has challenged the legality and validity of the order of detention bearing No. SB/ Tapasani/ PD/ Atk/ Regi.No.5/2004 dated 21.08.2004 passed against the detenu by the District Magistrate, Ahmedabad, in exercise of the powers conferred on him by Section 3(2) of The Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the "PBM Act").

3. For recording subjective satisfaction, the detaining authority -District Magistrate has considered involvement of the detenu in storing and selling the Hydrocarbon Petrol Solvent so that the same can be used as fuel in motor vehicles and also for storing and selling blue kerosene meant for public distribution system. From the grounds of detention conveyed to the detenu at the time of execution of order of detention, it reveals that on information as to illegal and criminal activities of black-marketing of petroleum products by the detenu, the shop/godown of the detenu was raised jointly by the Mamlatdar, Dascroi and police personnel of Traffic, DCP Squad, Ahmedabad City on 14.06.2004 and muddamal mentioned in para-4/B of the grounds of detention was recovered and was seized by the police. On the same day, the petitioner was also arrested by the police on the spot. It also reveals that a criminal case under for the offences punishable under the Essential Commodities Act was also filed against the petitioner wherein in the statement of the detenu recorded by the police, he had confessed his illegal activities. Considering the same, the District Magistrate - detaining authority has passed the order of detention on 21.08.2004.

4. The petitioner has challenged the legality and validity of the order on number of grounds as stated in the petition. However, ld. counsel Mr. Kapadia appearing for the petitioner-detenu has mainly focussed his arguments on one ground i.e. delay in passing the order of detention. He has submitted that the delay in passing the order of detention should be treated as fatal

and on this sole ground, order of detention can be quashed and petitioner should be set at liberty forthwith. This ground is specifically raised in para-2(9) of the memo of the petition. The detaining authority has also attempted to explain the allegations as to delay caused in passing order by filing reply-affidavit and in para-9, meeting with the allegations as to the delay, it has been submitted as under:-

" With respect to para 2(9) that after registering the case by the Amaraiwadi Police Station, report dated 15.06.2004 submitted by Mamlatdar the sample which was sent for analysis to the Forensic Science Laboratory which received in our office on 30.07.2004 and thereafter, the competent authorities have procured all the relevant documents pertaining to the bail order and bail application from the concerned Police Station which received on 07.08.2004 and thereafter, perusing all that documents, materials, I formulated the ground and the order of detention passed on 21.08.2004. Thus, it is not correct that there is delay in passing order."

5. It is argued by ld. AGP Ms. Punani that explanation rendered by the detaining authority -District Magistrate in above-quoted para should be accepted as satisfactory explanation. However, according to ld. counsel Mr. Kapadia for the detenu, in more than one decisions in such cases, such or similar explanations given by the detaining authority have been held not found to be satisfactory by this Court. In support of his submission, he has placed reliance on two decisions of this court; (i) Spl.C.A. No. 9230/2002 decided on 16.01.2003 (Coram: Hon'ble Mr.Justice P.B. Majmudar) in the case of Nandlal Nanalal Tailee v/s State of Gujarat, and (ii) Spl.C.A. No. 9936/2003 decided on 25.09.2003 (Coram: Hon'ble Mr.Justice J.R.Vora) in the case of Prabhubhai Nathubhai Dholi v/s State of Gujarat. For the sake of convenience, it would be proper for this Court to quote observations and findings recorded in relevant para on page No.6 of the decision of this Court dated 25.09.2003 rendered in Spl.C.A. No. 9936/2003:-

" In detention matter, it is not necessary to wait till the report of Chemical Analyst for the reasons that a statement of the petitioner admitting incident recorded. A panchanama is also drawn to the effect that the kerosene which came to be seized from the petitioner was blue

> colour kerosene, therefore, when the object of detention is always to see that the person may be immediately prevented from acting prejudicial to the maintenance of supply of essential commodity and from preventing him from indulging in the activity of black marketing, immediate action is imperative of law. The delay in passing the order in such circumstances would frustrate the entire object of legislation. Further the live-link between the incident complained of on which the assumption of repetitive tendency is based, and that the passing of the order itself is snapped by causing delay. Ld. Advocate for the petitioner has relied upon a decision of this Court delivered on 16.01.2003 in the matter of Nandlal Nanalal Tailee vs. State of Gujarat. In this view of the matter, the order of detention is required to be quashed and set aside on this ground alone."

6. It is submitted by ld. counsel Mr. Kapadia that this is a consistent view and this Court has viewed seriously the point of delay caused in passing detention order because the detaining authority is supposed to pass the order of preventive detention at the earliest as the ultimate object of detention is to see that a person may be immediately prevented from doing illegal activities adverse to the public distribution system affecting the public at large. Undisputedly in the present case, confessional statement of the detenu was recorded on 14.06.2004 i.e. the day on which raid was carried and formal criminal complaint was also instituted on that very day. On 15.06.2004, the detenu was released on bail in connection with the criminal complaint filed against him in this regard. Hence, there was no reason for the detaining authority to wait till it receives the report from Chemical Analyser - Forensic Science Laboratory regarding the contents of the material seized.

7. In view of facts and circumstances of the case as aforesaid and in view of ratio of above-cited decision which squarely applies to the facts of the present case, the impugned order of detention requires to be quashed solely on the ground of delay in passing the order of detention.

8. For the reasons aforesaid, the petition is hereby allowed. The impugned order of detention dated 21.08.2004 passed by the District Magistrate, Ahmedabad against the detenu is hereby quashed and set aside and detenu Shri Swadeshkumar Shivkumar Jain is hereby ordered

to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute. Direct service is permitted.

[C.K. BUCH, J]

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